

APPEAL NO. 032813
FILED DECEMBER 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 2, 2003. The hearing officer determined that the respondent's (claimant) compensable (left shoulder tear and cervical strain/sprain) injury of _____, included cervical herniated discs.

The appellant (carrier) appeals, contending that MRI's performed before and after _____, show that the herniated discs preexisted the compensable injury and that the claimant's medical evidence to the contrary was not credible. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a long haul truck driver, sustained a prior compensable cervical injury in June or the first day or so of July 2001. An MRI was performed on July 2, 2001, the claimant was given physical therapy and massage and returned to his regular duties. The claimant sustained another compensable injury on _____, moving a 500-pound drum of oil. An MRI was performed on November 1, 2002. The carrier accepted a left shoulder tear and cervical/sprain/strain. The carrier contends that either the claimant does not have cervical disc herniations or the herniations were due to the 2001 compensable injury. Two carrier peer review doctors reviewed the MRI's and concluded that the claimant's "pre-existing underlying discopathies were not related to the [September 2002] injury" and the two MRI's "do not look markedly different." The claimant's treating doctor was of the opinion that the July 2, 2001, MRI showed no herniations (mild disc protrusion at C5-6 and protrusion at C6-7 without cord impingement) while the November 1, 2002, MRI showed a 4 mm herniation at C5-6 compressing the left C6 nerve root and a bulge at C6-7 compressing the C7 nerve root. The carrier attacks the qualifications of the treating doctor to interpret the MRI's. The hearing officer determined that the compensable injury of _____, included the cervical herniated discs.

There was clearly conflicting evidence presented on the disputed issue. The weight and credibility to be given to the different doctors' reports was solely within the province of the hearing officer. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The factors emphasized by the carrier in challenging that determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of

those factors was a matter for the hearing officer in resolving the issue before her. Nothing in our review of the record reveals that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb that determination on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge